

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2, 2015

FINAL EXAMINATION	DURATION				
LWZ316 – Evidence	<table> <tr> <td>Reading Time:</td><td>20 minutes</td></tr> <tr> <td>Writing Time:</td><td>120 minutes</td></tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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INSTRUCTIONS TO CANDIDATES

Question 1 in Section A is compulsory. Students must answer this question.

Students have a choice in Section B. Students must answer EITHER Question 2 OR Question 3, but not both.

1.1 The examination has 2 sections

Section A:

1 hour Problem Question: ALL students must answer this question

Marks as indicated by lecturer

Section B:

1 hour Problem Question: Answer only 1 of the 2 questions in this section

Marks as indicated by lecturer

Sections A and B must be answered in the booklets provided for in this examination paper and must be handed in with your examination paper. Please ensure that your name and student number are clearly indicated on your examination paper and on ALL booklets

1.2 Note that questions ARE of equal value.

1.3 Read ALL questions carefully.

1.4 Students are permitted to write on scrap paper during reading time

EXAM CONDITIONS

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, dictionary is permitted (annotated allowed)

Answer on the supplied examination material/s only

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 20 Page Book

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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BLANK.**

All questions should be answered in the Answer Booklets provided. Please ensure that your name and student number have been written on the Answer Booklets.

Section A

Compulsory Question – ALL students must answer this question

Total No of Marks for this section: 30 marks

Suggested Time allocation for Section A: 1 hour

Question 1

Annette and Barbara were married in New Zealand earlier this year and subsequently moved to Darwin in the Northern Territory. On 10 July 2015 police were called to Annette and Barbara's home by a neighbor, Carla, who told the officer taking the call, Denise, that: "I can see through the kitchen window and Annette is hitting Barbara with a cricket bat. You better get here quick".

When two police officers arrived five minutes later, they found Barbara on the floor in the kitchen badly injured. Annette was sitting at the dining room table with a cricket bat at her side and blood on her clothing. While one of the police officers called an ambulance, the other officer, Ellen, asked Annette what happened, to which Annette replied: "She said she was moving out and that just ain't gonna happen". Ellen then cautioned Annette and took her to the Darwin watch house to be charged with assault causing serious harm. Annette, on the advice of her lawyer, refused to take part in an Electronic Record of Interview.

When Barbara recovered consciousness two days later she was interviewed by police. The interview was recorded. She stated that she arrived home from work on 10 July 2015 and told Annette that she intended to move back to New Zealand. According to Barbara, Annette "went completely ballistic" and attacked her with a cricket bat. The next thing she recalled was waking up in hospital.

Annette has pled not guilty. Two days before Annette's criminal trial for assault, Barbara tells the prosecutor she and Annette have reconciled and are still living together. If called, Barbara will object to giving evidence and if she is required to give evidence, she will say that an intruder broke into the house and attacked her when she was preparing dinner.

On the day before the trial is to start, the prosecutor verbally informs counsel for Annette that Carla will not be called to give evidence because she has moved to Canada and refuses to come back for the trial. According to the prosecutor, Denise will be called to give evidence of what Carla said to Denise when Carla called to report the assault.

You are to assume that the *Evidence Act 1995* (Cth) applies to this trial. With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss the evidentiary issues that arise from the above facts.

Section B

Students must answer EITHER question 2 OR question 3. DO NOT answer both questions

Total No of Marks for this section: 30 marks

Suggested Time allocation for Section B: 1 hour

Question 2

Adam is charged with the armed robbery of a 7-11 store. He is being tried by a judge and jury. Closed circuit television cameras ('CCTV') recorded the robbery. The robber wore a Donald Trump mask over his face, a baseball cap, a skin tight black long sleeved shirt and black full-length pants.

At the trial, the prosecution intends to call Professor Barrows, who holds a PhD in anatomy. He has taught anatomy at a university level for 20 years, and has published widely in the field. At the request of the police, Professor Barrows was asked to conduct an anatomical comparison of the offender depicted in the CCTV recording and Adam. To conduct this comparison, Professor Barrows was supplied with a copy of the CCTV recording of the robbery, and CCTV footage of Adam moving about his cell while on remand for the robbery. While CCTV surveillance of persons on remand in their cells is permitted for internal security purposes, the *Care and Custody of Persons on Remand Guidelines*, which both correctional staff and police must follow, provides:

"While CCTV surveillance of persons on remand is allowed for internal security purposes, in all other respects Corrections staff and Police are to respect the privacy of persons on remand. Other than as provided for in these Guidelines, such CCTV footage cannot be used without the express authorisation of the CEO of the Department of Corrections."

No such authorization was obtained by the police for the use by Professor Barrows of the CCTV footage of Adam moving about in his cell.

If allowed to give evidence, Professor Barrow will state the following:

"The physical characteristics of the offender are that he is an adult male of ectomorphic build, in other words, he is skinny. His shoulders are approximately the same width as his hips and his height is medium compared to other persons. The shape of the head is dolichocephalic as opposed to brachycephalic, in other words he has a long head shaped like an elongated oval when viewed from the top, as opposed to a short, nearly spherical, head when viewed from the top. The offender is right handed.

The physical characteristics of Adam are that he is an adult male of ectomorphic build. His shoulders are approximately the same width as his hips and his height is medium compared to other persons. The shape of the head is dolichocephalic as opposed to brachycephalic. Adam is right handed.

I conclude that there is a high degree of anatomical similarity between offender depicted in the CCTV footage of the robbery and Adam."

Counsel for Adam objects to the admissibility of Professor Barrows' evidence, and before the trial commences, seeks a ruling from the trial judge as to whether Professor Barrows' evidence will be admissible at trial.

You are to assume that the *Evidence Act 1995* (Cth) applies to this trial. Discuss on what evidentiary grounds Adam's counsel can seek an advance ruling as to the admissibility of evidence. In addition, discuss on what evidentiary bases the objection to the admissibility of Professor Barrows' evidence could be made. [30 marks]

Question 3 – Answer both (a) and (b) below.

On 10 May 2015, Alice was jogging through City Park, which is owned by the local Council. According to Alice, she fell into a large hole which was unmarked. As a consequence of the fall she suffered a broken arm, a severely sprained ankle, and a concussion.

Alice brings a civil action against the Council in negligence. The particulars of the negligence are that the Council failed to warn those using City Park of the hole, and failed to keep the park grounds in good repair.

The Council intends to call Ben who was walking his dog Pickles at the time of Alice's accident. In Ben's written affidavit of evidence filed in advance of the trial and provided to Alice, Ben states:

"The woman I now know to be Alice jogged by me just before she fell into the hole. She was taking on her mobile. She must have been so absorbed in her conversation that she did not see the hole, because the hole was clearly visible to joggers."

Also included in Ben's affidavit is the following:

"I took Pickles to Woof Woof Pet Emporium on 11 May 2015 to buy a new collar. I mentioned to Freja, the sales assistant, that I'd seen a woman fall into a hole in the park yesterday. Freja told me that her friend Alice was injured in the park. Apparently, Alice told Freja that Alice had been on the phone to her father at the time of the accident, and her father had told Alice that her mother had been diagnosed with a terminal illness."

Both Ben and Freja will be called by the Council to give evidence at the trial.

(a) With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss all of the evidentiary issues that arise from the above facts. [20 marks]

On 1 May 2015, the Executive Director of the Council, Jill, wrote to Anders and Bottom, Solicitors, the solicitors for the Council. Jill's letter to Anders and Bottom contained the following:

"The Council is about to undertake some drainage works in City Park. The Council's maintenance crew has decided not to erect barriers around the works because local kids keep stealing the barriers and placing them across the bus lane. Instead, the maintenance crew has decided to post signs at the entrance to the park and near the drainage works warning park users of the hazard. I'm not convinced that this is sufficient and would appreciate your advice as to Council's legal liability should a member of the public be injured while using the park."

Jill will be called to give evidence for the Council at the trial. In an affidavit of evidence filed and provided to Alice, Jill states the following:

“The Council took legal advice as to any potential liability arising from the drainage works to City Park and the Council has acted in accordance with that advice.”

Alice’s lawyers are aware of Jill’s letter of 1 May 2015 but are not aware of its contents. Alice’s lawyers have requested that the Council produce for their inspection both Jill’s letter of 1 May 2015, and any letter of advice provided by Anders and Bottom, Solicitors. The Council has refused.

- (b) **With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss whether the Council will be required to disclose to Alice’s lawyers the contents of Jill’s letter of 1 May 2015 to Anders and Bottom, and any letter of advice provided to the Council by Anders and Bottom.**

[10 marks]

END OF EXAMINATION